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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 SANTA ROSA DIVISION

11 In Re: } Bankruptcy Case No.: 11-10231

12 RMS PROPERTIES, LLC, } Adversary Proceeding No.:

13 Debtor. } Chapter 11

15 RMS PROPERTIES, LLC,

16 Plaintiff,

17 v.

19 DELIVERY ASSOCIATES, INC.,
a California corporation

20 Defendant.

16 } COMPLAINT TO DETERMINE THE
17 } NATURE, EXTENT, AND VALIDITY OF
18 } LIEN OF DELIVERY ASSOCIATES INC.;
19 } AND FOR DECLARATORY RELIEF

24 **COMPLAINT TO DETERMINE THE NATURE, EXTENT, AND VALIDITY OF LIEN
25 OF DELIVERY ASSOCIATES, INC.; AND FOR DECLARATORY RELIEF**

26 Plaintiff, RMS Properties, LLC ("Plaintiff"), hereby alleges as follows:

27 1. This Court has jurisdiction over the within matter pursuant to 28 U.S.C. § 1334.
28 2. The within proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K).

Adversary Complaint

1 3. The within case was commenced by Plaintiff on January 25, 2011, by filing a
2 voluntary petition pursuant to title 11, chapter 11, of the United States Bankruptcy Code. The
3 Plaintiff's Chapter 11 Plan of Reorganization was approved by the Court by Order entered on
4 May 7, 2012.

4 **FIRST CLAIM FOR RELIEF**
5 (Nature, Extent, and Validity of Lien)

6 4. Plaintiff purchased from one, Robbie Stern, doing business as Palazzo Interiors,
7 furniture, furnishings, fixtures, and other items (the "Personal Property) for use in Plaintiff's
8 Colorado lodge.

9 5. The Personal Property is currently located at the premises of Deliver Associates,
10 Inc. ("Defendant") in North Hollywood, California.

11 6. Defendant has filed a secured proof of claim in the amount of \$51,279.84 and
12 asserts that the Defendant's claim is secured by a "Warehouseman's Lien" on the Personal
13 Property.

14 7. Plaintiff has made written demands on Defendant for production of a Warehouse
15 Receipt or Storage Agreement for the Personal Property, but Defendant has failed and refused to
16 produce such document(s).

17 8. Plaintiff does not believe that Defendant has a valid Warehouse Receipt or
18 Storage Agreement for the Personal Property under California Commercial Code Section 7200
19 et. seq.

20 9. Further, Defendant did not give Plaintiff actual notice in writing, either by
21 personal service or by registered letter addressed to Plaintiff, the holder of legal title to the
22 Personal Property, that Defendant claimed a possessory lien on the Personal Property under
23 California Civil Code Section 3051a or any other provision of Chapter 6 of the California Civil
24 Code.

25 10. Based on Defendant's failure to hold a written Warehouse Receipt or Storage
26 Agreement for the Personal Property, and the Defendant's failure to provide the Plaintiff with
27 actual notice, in writing, either by personal service or by registered letter addressed to Plaintiff,
28 that Defendant's claimed secured lien on the Personal Property is invalid and Defendant's claim,

Adversary Complaint

1 if any, should be treated as a general unsecured claim pursuant to the provisions of Debtor's
2 confirmed Chapter 11 Plan.

3

SECOND CLAIM FOR RELIEF
(Declaratory Relief)

4

5 11. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1
6 through 10, above, as though set forth fully herein and at length.

7 12. There is an actual controversy between the Plaintiff and the Defendant, in that the
8 Defendant claims a secured possessory interest in the Personal Property, and the Plaintiff denies
9 that the Defendant has any secured possessory interest in the Personal Property, and any claim
10 held by the Defendant, is wholly an unsecured claim to be treated pursuant to the provisions of
11 the Debtor's confirmed Chapter 11 Plan.

12 13. As a result thereof, Plaintiff is entitled to declaratory relief that Defendant does
13 not have a valid possessory lien on the Personal Property.

14

THIRD CLAIM FOR RELIEF

15

(Declaratory Relief as to Amount of Claim)

16 14. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1
17 through 10, above, as though set forth fully herein and at length.

18 15. The amount set forth in the defendant's claim is unreasonable and in excess of the
19 value to the Chapter 11 estate of the services allegedly set forth in the proof of claim.

20 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

21 1. For a determination of the Nature, Extent, and Validity of the lien asserted by
22 Delivery Associates Inc. on the Personal Property;

23 2. For a declaration that the Defendant's possession of the Personal Property does
24 not constitute a valid lien on the Personal Property;

25 3. For a declaration of the reasonable value of the services to the Chapter 11 estate,
26 if any, provided by the defendant.

27 4. For costs of suit incurred herein; and

28 5. For such other and further relief as this Court deems just and proper.

Adversary Complaint

1 DATED: JULY 16, 2012

MIKEL D. BRYAN, P.C.

2 /s/MIKEL D. BRYAN

3 By: Mikel D. Bryan
4 Attorney for Plaintiff

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Adversary Complaint

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